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In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

WHITING POOLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a bankruptcy court in a reorganization proceeding under Chapter 11 of the Bankruptcy Code may compel the government, pursuant to 11 U.S.C. (Supp. IV) 542(a), to turn over to the debtor-in-possession property which the government had seized by levy to satisfy the debtor's delinquent federal tax liabilities prior to the filing of the bankruptcy petition.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-32a) is reported at 674 F.2d 144. The opinions of the district court (Pet. App. 46a-51a) and the order, memorandum and decision of the bankruptcy court (Pet. App. 33a-45a) are not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on March 9, 1982. By orders dated May 28 and June 28, 1982, Justice Marshall extended the time for filing a petition for a writ of certiorari to and including August 6, 1982, and the petition was filed on that date. The petition was granted on November 29, 1982. The jurisdiction of this Court rests on 28 U.S.C. 1254(a).

STATUTES INVOLVED

Sections 363, 541, and 542 of the Bankruptcy Code (11 U.S.C. (Supp. IV)) and Section 6331 of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth in Pet. App. 52a-56a.

STATEMENT

Respondent is a corporation which was engaged in the business of installing and servicing swimming pools and selling related supplies. During 1979 and 1980, the Internal Revenue Service made several assessments against respondent for unpaid withholding and social security taxes, which respondent concededly owed in the amount of approximately $92,000, plus interest. On January 14, 1981, in order to obtain payment of respondent's delinquent tax liabilities, the Internal Revenue Service exercised its right to levy upon property belonging to respondent, pursuant to Section 6331 of the Internal Revenue Code of 1954 (26 U.S.C.). After entering respondent's place of business, under the authority of a warrant issued by a United States Magistrate, the Service seized respondent's inventory, equipment, and other tangible property (Pet. App. 1a-2a).

On January 15, 1981, the day following the Service's levy, respondent filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of New York. Pursuant to the provisions of the Bankruptcy Code, respondent became a "debtor-in-possession" authorized to continue to operate its business during the pendency of the reorganization (Pet. App. 2a-3a).

One month later, the Internal Revenue Service sought to sell the seized property in order to apply

the proceeds to respondent's delinquent tax debt. On February 18, 1981, the government therefore commenced an adversary proceeding in the bankruptcy court seeking a determination that the automatic stay provision of the bankruptcy law (11 U.S.C. (Supp. IV) 362) did not bar its proposed sale of the seized property, and that it be permitted to sell the property it had seized from respondent. Respondent counterclaimed, seeking an order requiring the United States to turn over the seized property to it pursuant to Section 542 of the Bankruptcy Code (Pet. App. 1a-2a).

The bankruptcy court agreed with the government that, under the law then applicable in the Western District of New York (see *In re Avery Health Center, Inc.*, 7 Bankr. Ct. Dec. (CRR) 210 (W.D. N.Y. 1981)), respondent was not entitled to compel a turnover of the property under Section 542. In so holding, the bankruptcy court ruled that only "property of the estate"—i.e., interests in property belonging to the debtor at the time of the filing of the bankruptcy petition—is required to be turned over to a debtor pursuant to Section 542. Because the debtor had no right to have the property returned at the time the petition was filed, unless it paid its delinquent federal taxes, the seized property was not "property of the estate" that would have been subject to a turnover order under Section 542.

The bankruptcy court nevertheless ordered the government to turn over the seized property on the ground that the government was a "custodian" within the meaning of Section 543 of the Bankruptcy Code (11 U.S.C. (Supp. IV)), and was therefore required by that Section to deliver to the trustee the "property of the debtor" under its control. However, the bank-

ruptcy court conditioned the government's delivery of the property upon respondent's payment to the government of $20,000 in order to protect the government's interest in the seized property (Pet. App. 39a-43a).[1]

On appeal, the district court upheld the government's position in all respects. It ruled that the government was not a "custodian" subject to the turnover provisions of Section 543 with respect to property seized by a tax levy executed before a bankruptcy petition is filed. Following its decision in *Avery Health Center*, *supra*, the district court also rejected the debtor's contention that the government could be compelled pursuant to Section 542 to turn

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[1] The $20,000 amount which the bankruptcy court ordered paid to the government as a condition of turnover erroneously included $15,000 contained in a bank account which the government had also seized by a pre-petition tax levy. The propriety of that seizure was never put at issue in this litigation. Hence, the net effect of the bankruptcy court's order required respondent to pay over only an additional $5,000 to the government as a condition of turnover. That $5,000 amount was considerably less than the $22,450 to $35,000 that an expert witness estimated that the government might be able to obtain upon a sale of the seized property. Accordingly, the government took the position in the district court that the bankruptcy court's order did not provide adequate protection of the government's interests in the seized property during reorganization. Because the district court sustained the government's contention that the debtor was not entitled to a turnover order, it did not reach this issue. The court of appeals, however, concluded that turnover was authorized with respect to property seized by means of pre-petition levy. It therefore remanded the case with instructions to the bankruptcy court to address and redetermine the issue of the adequacy of the protection before any new turnover order is issued (Pet. App. 2a, 31a-32a). The property remains unsold in the government's control, pending the disposition of the case by this Court.

over the seized property. The district court therefore reversed the order of the bankruptcy court requiring the government to deliver the property to the debtor (Pet. App. 46a-51a).

The court of appeals reversed. Although it agreed with the district court that the government is not a "custodian" of property seized by a tax levy within the meaning of Section 543 (Pet. App. 7a-10a), it concluded that the government could be ordered to turn over such property under Section 542, provided the debtor could demonstrate that the government's interest in the property would be adequately protected (Pet. App. 10a-32a).

In so holding, the court—"conceding the question to be a close one" (Pet. App. 2a)—acknowledged that there was "some force" (*id.* at 12a) in the government's construction of the pertinent statutes, and that the only other court of appeals that had considered the question had upheld the government's position. *Cross Electric Co.* v. *United States*, 664 F.2d 1218 (4th Cir. 1981) (Pet. App. 2a). Nevertheless, the court's review of the cases regarding the turnover authority of the bankruptcy courts, with respect to collateral held by secured creditors under Chapters X and XII of prior law, and of the testimony before congressional committees during the hearings leading to the enactment of the Bankruptcy Code, led it to believe that Congress must have intended to incorporate in the new Bankruptcy Code the rule with respect to turnover authority that had developed in the decisions under the old Bankruptcy Act (Pet. App. 12a-23a).[3] In the court's view, the govern-

[3] Prior to the enactment of the Bankruptcy Code, bankruptcy proceedings were conducted pursuant to a body of federal statutory law commonly referred to as the "Bankruptcy Act" which consisted of the provisions of the Bankruptcy Act

ment's position subsequent to a tax levy was analogous to that of a private secured creditor who was subject to turnover authority under Chapters X and XII of the superseded Bankruptcy Act. Accordingly, even though there was no established principle of prior law that the government must turn over property seized by a tax levy, the court of appeals concluded that the turnover authority survived the enactment of the new Bankruptcy Code, and extended to property seized by a federal tax levy prior to the filing of the bankruptcy petition (*id.* at 23a-31a). The court of appeals therefore remanded the case to the bankruptcy court to "consider whether a turnover order is appropriate under present circumstances and, if it decides in the affirmative, what protection should be afforded to the United States" (*id.* at 32a).

SUMMARY OF ARGUMENT

1. Under Section 542(a) of the new Bankruptcy Code, persons holding property which the trustee may "use, sell, or lease," but which is out of the immediate possession of the debtor, must turn over such property to the trustee appointed to oversee the estate. Section 363 states that the trustee may "use, sell, or lease" the "property of the estate." Thus, Section 542 authorizes the turnover of "property of the estate."

In turn, for present purposes, Section 541(a)(1) of the Bankruptcy Code defines "property of the estate" to include "all legal or equitable interests of the

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of 1898 (ch. 541, 30 Stat. 544), as revised, supplemented, and amended. Although for convenience we have referred to the provisions of the Bankruptcy Act as "prior law," in general those provisions remain applicable with respect to bankruptcy proceedings that were instituted before October 1, 1979. See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, Sections 402(a) and 403(a), 92 Stat. 2682 and 2683; compare, for example, Section 403(b), 92 Stat. 2683.

debtor in property *as of the commencement of the case*" (emphasis supplied). Thus, the estate includes only the debtor's interests in property as of the date on which a petition is filed under the Bankruptcy Code. By virtue of Section 541(a)(1), the estate acquires only the debtor's interests in property. If the debtor's interests in property are limited, then the estate acquires only those limited interests. Hence, if the debtor lost his interests in certain property prior to the filing of the bankruptcy petition, such property is not "property of the estate" and need not be turned over to the trustee under Section 542(a). Simply put, the scope of the relevant statutory definition of "property of the estate" is not intended to expand the debtor's rights vis-a-vis third parties beyond what he would have had in the absence of bankruptcy.

That fundamental principle upon which the statute is based governs this case. Here, respondent filed a petition for reorganization under the new Bankruptcy Code *after* the government had exercised its statutory right to collect delinquent taxes from it by levy upon certain of its tangible property. The relevant provisions of the Internal Revenue Code make it clear that subsequent to a levy, the debtor's rights in the seized property are exceedingly limited. As this Court stated in *Phelps* v. *United States*, 421 U.S. 330, 337 (1975), a decision which the court below sought unsuccessfully to distinguish, "The levy, therefore, gave the United States full legal right to the [property] levied upon as against the claim of the petitioner receiver." In such circumstances, the debtor retains only the right to "redeem" the property by paying the amount of tax due (26 U.S.C. 6337(a)), to receive notice of sale of the property (26 U.S.C. 6335(b)), and to obtain any surplus in the proceeds realized at sale (26

U.S.C. 6342). Since the debtor does not have the right prior to filing for reorganization to return of property seized for payment of taxes, unless he pays his arrearages in full, the debtor's estate obtains only that conditional right at the time of the filing for reorganization.

2. a. Although the court of appeals found "some force" (Pet. App. 12a) in the foregoing construction of the statute based upon the plain language and accompanying legislative history, it concluded that it "ultimately must reject it" (*ibid.*). The court's analysis proceeded upon a three-step syllogism. First, the court noted that under Chapters X and XII of prior bankruptcy law, a bankruptcy court could order secured creditors who had lawfully repossessed property of the debtor, but had not yet disposed of it, to turn over such property to the reorganizing debtor. Although the court of appeals observed that no specific provisions comparable to the prior law were enacted as part of the new Bankruptcy Code, it believed that Congress could not have intended to discontinue that authority. It therefore inferred, largely on the basis of the statements of certain witnesses before the congressional committees, that the old turnover rule was carried forward in the new statute. The second step in the court's reasoning was to analogize the government's position after a tax levy to that of a secured creditor who had repossessed the debtor's property. Finally, the court concluded that the debtor is as entitled to turnover of property seized to satisfy delinquent taxes as it is to turnover of collateral in the possession of a secured creditor.

But even if we assume that the court of appeals correctly inferred that Congress intended to incorporate in the new Bankruptcy Code a turnover rule with re-

spect to secured creditors, that conclusion furnishes no support for the third step of its analysis—its extension of the turnover rule to the government's seizure of property by a pre-petition tax levy. Under prior law, property seized by a pre-petition tax levy was not subject to turnover authority either in liquidating bankruptcies (*Phelps* v. *United States*, *supra* or in Chapter XI proceedings (*In re Pittsburgh Penguins Partners*, 598 F.2d 1299 (3d Cir. 1979)). Accordingly, there was no established rule under prior law requiring the government to surrender property seized by a pre-petition tax levy. Indeed, the rule under prior law favored the government's pre-petition tax levies.

The court's conclusion that there was such a turnover rule in Chapters X and XII proceedings to which the government was subject (although no case had so held) and its inference that Congress had codified it (although the legislative history makes no mention of it) are flatly at odds with the legislative process leading to the enactment of the Bankruptcy Code. As this Court has often stated, "[i]t will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." *United States* v. *Ryder*, 110 U.S. 729, 740 (1884). Accord: *Aberdeen & R.R.R.* v. *Students Challenging Regulatory Agency Procedures*, 422 U.S. 289, 309 n.12 (1975).

b. Moreover, in analogizing the government's position as a tax collector to the position of a secured creditor, the court of appeals disregarded the substantial differences between the consensual relationship of a private creditor and his debtor, and the involuntary relationship of the government and a de-

linquent taxpayer. Here, unlike a consensual private creditor, the government became an involuntary creditor because the "debtor has simply helped itself to amounts withheld from employees" (Pet. App. 31a). Such "trust fund" taxes are not "property of the estate" under Section 541(a) even when the collected taxes are in the debtor's possession at the time the petition is filed. 124 Cong. Rec. 32417, 34016-34017 (1978). Hence, if the withheld taxes were still in the debtor's possession, they would not be property available for the debtor's use. Ironically, however, under the court of appeals' decision, if the government has taken active steps to collect by levy delinquent amounts due for such withholding taxes, the court would require that the seized property be returned to the debtor for its use. Such a result unjustly rewards the debtor for its misappropriation of the government's funds.

3. At all events, there is no basis for the court of appeals' initial premise that Congress intended Section 542(a) to require secured creditors to turn over repossessed collateral. A court's first duty in interpreting a statute is to look to the terms employed in a statutory provision where the terms are plain and that method produces a reasonable result. See, e.g., *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965); *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 453 U.S. 1, 13 (1981); *Rubin* v. *United States*, 449 U.S. 424, 430 (1981); *Howe* v. *Smith*, 452 U.S. 473, 480, 483 (1981); *United States* v. *Turkette*, 452 U.S. 576, 580 (1981).

Here, the terms of Section 542 cannot be reconciled with the court of appeals' interpretation. Section

542(a) contains no requirement that repossessed collateral be surrendered. The statutory language provides no support for the court's conclusion that secured creditors are subject to turnover authority. Moreover, the legislative history demonstrates that the court of appeals erred in defining the scope of property subject to turnover. In considering legislative history, it is well established that the text of the final House and Senate committee reports explaining the measure at issue, as well as the explanatory remarks concerning the legislation made by the chief sponsors thereof just prior to final passage, are of primary value. *United States* v. *International Union United Automobile Workers*, 352 U.S. 567, 585 (1957); *NLRB* v. *Fruit & Vegetable Packers & Warehousemen*, 377 U.S. 58, 66 (1964).

The court of appeals gave no weight to the explanations in those primary legislative sources. Rather, the court rested its conclusion largely upon its belief that Congress intended to retain prior law regarding turnover, despite Congress' failure to employ terms accomplishing that end or to make its desire to do so explicit in the House and Senate committee reports. Finally, the court relied upon the statements and proposals of witnesses in hearings before congressional committees, referring to proposals and suggested terms that were not employed in the statute Congress ultimately enacted.

In sum, the legislative history falls far short of even suggesting, much less demonstrating, that Congress agreed with the testimony of the witnesses, upon which the court of appeals relied. Hence, there is no convincing evidence for the court's premise that Congress intended to codify a rule that would subject secured creditors to turnover of repossessed collateral, much less its ruling here extending such a "rule" to the government's pre-bankruptcy tax levies.

ARGUMENT

A BANKRUPTCY COURT IN A REORGANIZATION PROCEEDING MAY NOT COMPEL THE GOVERNMENT TO RETURN TO THE DEBTOR-IN-POSSESSION PROPERTY WHICH THE GOVERNMENT HAD SEIZED BY LEVY TO SATISFY THE DEBTOR'S DELINQUENT FEDERAL TAX LIABILITIES PRIOR TO THE FILING OF THE BANKRUPTCY PETITION

A. The Bankruptcy Code requires the turnover to the debtor-in-possession of only those interests in property that the debtor possessed as of the filing of the bankruptcy petition

This case presents an important question, on which the courts of appeals have divided, concerning the relationship of the provisions of the new Bankruptcy Code to the government's statutory authority to collect delinquent federal taxes by seizure of property. Under the new Bankruptcy Code, persons in possession of certain prescribed property of a debtor seeking the protection of the bankruptcy laws must turn over such property to the trustee appointed to oversee the estate. The property subject to this "turnover" authority generally includes "property of the estate"—all interests of the debtor in property as of the commencement of the case, i.e., as of the date of the filing of the bankruptcy petition. Hence, if the debtor lost his interest in certain property prior to the filing of the bankruptcy petition, such property is not "property of the estate" and need not be turned over to the trustee. Simply put, the relevant statutory definition of the "property of the estate" is not intended to expand the debtor's rights vis-a-vis third parties beyond what he would have had in the absence of bankruptcy.

That fundamental principle upon which the statute is based governs the outcome of this case. Here,

respondent filed a petition for reorganization under the new Bankruptcy Code *after* the government had exercised its statutory right to collect delinquent withholding taxes from it by levy upon certain of its tangible property. In these circumstances, under the pertinent provisions of the Internal Revenue Code, which prescribe the nature and extent of a delinquent taxpayer's interest in property subsequent to levy, the tax levy served substantially to terminate respondent's property interest in the assets seized by the Internal Revenue Service. Hence, as we shall show, the seized assets were not "property of the estate" subject to the turnover provisions of Section 542(a) of the Bankruptcy Code. The government's indisputably proper tax levy should not, as the court of appeals mistakenly held, be defeated by respondent's subsequent filing of a Chapter 11 petition. Nothing in the terms of the relevant statutory provisions or in their legislative history suggests that Congress intended to impose such a fundamental limitation upon the effectiveness of federal tax levies.

1. a. We begin our analysis with the language of the pertinent provisions of the Bankruptcy Code. Section 542 of the new Bankruptcy Code[3] (Pet. App. 54a) is entitled "Turnover of property to the estate."

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[3] The Bankruptcy Code is a comprehensive codification and revision of bankruptcy law. It was enacted on November 6, 1978, as the Bankruptcy Act of 1978 (Pub. L. No. 95-598, 92 Stat. 2549), and became effective in most respects on October 1, 1979. See generally *Northern Pipeline Construction Co.* v. *Marathon Pipeline Co.*, No. 81-150 (June 28, 1982). Although the Court there held that the broad grant of jurisdiction to the bankruptcy judges violated Article III of the Constitution, the substantive rules contained in the new Bankruptcy Code and applied in this case are not implicated by that decision. See *United States* v. *Security Industrial Bank*, No. 81-184 (Nov. 30, 1982), slip op. 4 n.5.

It is placed in Chapter 5 of the Code and therefore applies in all bankruptcy proceedings. See 11 U.S.C. 103(a). Section 542(a) provides that property which the trustee may "use, sell, or lease," but which is in the hands of an entity [4] and therefore out of the immediate possession of the debtor, must be turned over to the trustee appointed to oversee the estate.[5] The provision states that—

> an entity * * * in possession, custody, or control during the case, of property that the trustee may use, sell, or lease under section 363 of this title * * * shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

Section 542(a) specifies that the property subject to turnover is property that "the trustee may use, sell, or lease under section 363" of the Bankruptcy Code. In turn, Section 363 (Pet. App. 52a) generally provides that the property that the trustee may "use, sell, or lease" is the "property of the estate." Specifically, Section 363(b) states, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Section 363(c)(1) directs that where the debtor's business is authorized to be operated, the trustee may use "property of the estate" without notice or a hearing "in

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[4] For purposes of the Bankruptcy Code, an entity is defined to include a "person, estate, trust, [or] governmental unit." 11 U.S.C. (Supp. IV) 101(14).

[5] In certain cases arising under Chapter 11 of the Bankruptcy Code, such as the instant case, the debtor itself remains in possession of the assets of the estate; the "debtor-in-possession" in such cases has all of the rights, powers, and duties of a trustee. See 11 U.S.C. (Supp. IV) 1107(a).

the ordinary course of business." Section 363(c), however, provides that when another entity has an interest in the "property of the estate," the trustee may use, sell, or lease it only if it can provide "adequate protection" to that entity.[8] Hence, the net effect of Sections 363 and 542 of the Bankruptcy Code is that the only category or property that is subject to the turnover provisions of Section 542(a) is "property of the estate."

The legislative history confirms the correctness of our submission that the turnover authority is limited to "property of the estate." As the pertinent House and Senate Reports explained in connection with Section 542(a) (emphasis supplied):

> Subsection (a) of this section requires anyone holding *property of the estate* on the date of the filing of the petition, or property that the trustee may use, sell or lease under section 363, to deliver it to the trustee. The subsection also requires an accounting. The holder of the property of the estate is excused from the turnover requirement of this subsection if the property held is of inconsequential value to the estate.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 369 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. at 84 (1978). The property that must be turned over pursuant to Section 542(a) is that "property of the estate" which the trustee is entitled to use, sell or lease.

b. The definition of "property of the estate" is similarly precise and explicit. For present purposes, Section 541(a)(1) of the Bankruptcy Code defines

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[8] Upon the request of an entity having an interest in the "property of the estate" that the trustee proposes to use, sell or lease, Section 363(e) requires that "the court shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."

"property of the estate" to include "all legal or equitable interests of the debtor in property *as of the commencement of the case*" (emphasis supplied).[7] Thus, the estate includes only the debtor's interests in property as of the date on which a petition is filed under the Bankruptcy Code.[8] The debtor's interest in such property becomes "property of the estate" without regard to whether the debtor has title to the property or has possession of it. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 367-368 (1977); S. Rep. No. 95-989, 95th Cong., 1st Sess. 82-83 (1978).

Although the scope of Section 541(a) is broad, it is not unlimited. The legislative history makes it clear that the provision was not intended to enlarge the debtor's rights in property beyond those available to the debtor at the time the bankruptcy petition is filed.[9] Thus, the House and Senate Reports state

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[7] Other subsections of Section 541(a) (see Section 541(a)(2) through (7)) specify that "property of the estate" includes additional property interests in which the debtor had no right as of the commencement of the case. For example, property of the estate includes property that a custodian must turn over pursuant to Section 543, property that the trustee recovers by using his avoiding powers (see Sections 544, 545, 547, 548 and 550), and other specified interests. See, e.g., 11 U.S.C. 541(a)(3). Neither respondent nor the court of appeals relied upon any of these provisions, and they are not relevant to the instant case. Indeed, the court of appeals pointed out that Section 541(a)(1) defines the extent of the estate "with exceptions not here relevant" (Pet. App. 11a). Thus, the question presented in this case turns on the scope of the general definition of "property of the estate" set forth in Section 541(a)(1).

[8] A case is comemnced by the filing of a petition under Sections 301, 302, or 303 of the Bankruptcy Code. See 11 U.S.C. (Supp. IV) 541(a).

[9] After the case is commenced, in some circumstances the trustee may have different rights than the debtor would have

(H.R. Rep. No. 95-595, *supra*, at 367-369; S. Rep. No. 95-989, *supra*, at 92 (emphasis supplied)) that—

> this paragraph [Sec. 541(a)(1)] * * * *is not intended to expand the debtor's rights against others more than they exist at the commencement of the case.* For example, if the debtor has a claim that is barred at the time of the commencement of the case by the statute of limitations, then the trustee would not be able to pursue that claim, because he too would be barred. He could take *no greater rights than the debtor himself had.*

The remarks of the principal congressional sponsors of the Bankruptcy Code just prior to enactment are to the same effect.[10] While acknowledging that Section 541(a) is an "all-embracing definition" which

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had. For example, the trustee has an additional time period in which to pursue a claim, where the statute of limitations had not expired prior to filing the petition for relief under the Bankruptcy Code. See 11 U.S.C. (Supp. IV) 108; see also H.R. Rep. 95-595, *supra*, at 367; S. Rep. No. 95-989, *supra*, at 82. Such exceptions to the general rule that the estate acquires whatever rights the debtor had are explicity set forth in the Bankruptcy Code.

[10] Although there were substantial differences between the House (H.R. 8200, 95th Cong., 1st Sess. (1977)) and the Senate (S. 2266, 95th Cong., 2d Sess. (1978)) versions of the proposed Bankruptcy Code, time constraints prevented the preparation of a conference committee report reconciling these differences. Instead, Representative Don Edwards and Senator DeConcini made oral reports to Congress on the results of the closed-door conferences. See 124 Cong. Rec. 32391-32392 (1978) (Statement of Rep. Edwards); 124 Cong. Rec. 33990 (1978) (Statement of Sen. DeConcini). See *Northern Pipeline Co.* v. *Marathon Pipeline Construction Co.*, *supra*, slip op. 10-11 n.12; see generally, K. Klee, *Legislative History of the New Bankruptcy Code*, 28 De Paul L. Rev. 941 (1979) (*reprinted in* 54 Am. Bankr. L.J. 275 (1980)).

includes all "beneficial rights and interests" that the debtor may have, they nevertheless pointed out that (124 Cong. Rec. 32399, 33999 (1978) (emphasis added))—

> * * * *only the debtor's interest* in such property *becomes property of the estate.* If the debtor holds bare legal title or holds property in trust for another, only those rights which the debtor would have otherwise had emanating from such interest pass to the estate under Section 541.

Finally, the legislative history contains numerous similar descriptions of Congress' intent. For example, Representative Edwards, the chief House sponsor of the Bankruptcy Code, stated that Section 541(d) "reiterates the general principle that where the debtor holds bare legal title without any equitable interest, the estate acquires bare legal title without any equitable interest in the property." 124 Cong. Rec. 32399 (1978). He added that the converse proposition is also true (*ibid.*; emphasis added):

> Similarly, if the debtor holds an equitable interest in property without legal title, the estate would acquire only the equitable interest of the debtor in property and not the legal title. Thus, as section 541(a)(1) clearly states, the estate is comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. *To the extent such an interest is limited in the hands of the debtor it is equally limited in the hands of the estate* except to the extent that defenses which are personal against the debtor are not effective against the estate.

See also 4 *Collier on Bankruptcy* ¶ 541.24, at 541-88 (15th ed. 1979). Indeed, Congress' belief that this principle was clearly established resulted in its deletion of two provisions based upon the principle. The Senate had proposed that Section 541 expressly pro-

vide that property of the estate does not include amounts held by the debtor as trustee or any taxes withheld or collected from others before the commencement of the case. These provisions were omitted as unnecessary because only the "legal and equitable interests of the debtor" become property of the estate. 124 Cong. Rec. 32417, 34016-34017 (1978).

In sum, the legislative history reinforces the plain meaning of the statutory language of Section 541(a)(1)—that by virtue of the general rule of that provision, the estate acquires only the debtor's interests in property as of the time the bankruptcy petition was filed. To the extent that the debtor's interests in property at that time were limited, the estate acquires only those limited interests. 4 *Collier on Bankruptcy*, *supra* (15th ed.), ¶ 541.01, at 541-5 to 541-7. Accordingly, under the plain terms of the relevant provisions and the explanations set forth in the House and Senate reports, the "property of the estate" which the bankruptcy court could require to be turned over to the debtor-in-possession under Section 542(a) consisted only of the debtor's interests in property as of the date it filed its petition for relief pursuant to the Bankruptcy Code. We turn now to consider what interests respondent had in the property seized by the Internal Revenue Service and whether those interests were includable in the "property of the estate."

B. The property seized by the Internal Revenue Service was not part of the "property of the estate" as of the time the debtor filed its bankruptcy petition because it had no right to return of the property without payment of its delinquent tax liabilities

1. The Bankruptcy Code does not itself define the property interests of a debtor. Hence, the extent of respondent's interest in the seized property at the

time it filed its bankruptcy petition must be determined by reference to non-bankruptcy law. 4 *Collier on Bankruptcy, supra* (15th ed.), ¶ 541.02[1], at 541-10. Here, since the Internal Revenue Service seized the property pursuant to a levy authorized by Section 6331 of the Internal Revenue Code to satisfy the debtor's federal tax liabilities, the interest of respondent in the property subsequent to the levy must be determined by reference to the Internal Revenue Code.

The relevant provisions of the Internal Revenue Code establish that subsequent to a levy, a taxpayer's rights with respect to the seized property are extremely limited. Section 6331(a) provides that "[i]f any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary *to collect such tax* * * * *by levy* upon all property and rights to property * * * belonging to such person or on which there is a lien" (emphasis supplied). Section 6331(b) defines a levy to include "the power of distraint and seizure by any means." [11] Section 6332(a) requires any person holding property upon which a levy has been made to "surrender such property or rights * * * to the Secretary" and, pursuant to Section 6332(c), any person who refuses to surrender property subject to levy "shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered" to the extent of the amount of the

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[11] Section 6331(a) of the 1954 Code has its roots in similar provisions contained in the 1939 Code (see, e.g., Sections 3690, 3692 and 3700 (1939 ed.), the Rev. Stat. (Sections 3187, 3188 and 3196 (1878 ed.)), and earlier provisions (see, e.g., Act of July 13, 1866, ch. 184, Section 9, 14 Stat. 107).

taxes "for the collection of which such levy has been made."

A person who honors a levy is "discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment." 26 U.S.C. 6332(d); see *Sims* v. *United States*, 359 U.S. 108 (1959).[12] The delinquent taxpayer and other persons are prohibited from restraining the collection of the taxes. See 26 U.S.C. 7421(a). Accordingly, once the Internal Revenue Service seizes property by levy, the delinquent taxpayer can no longer exercise the basic rights of ownership. He is not entitled to possession or use of the property, nor can he defeat the collection of the taxes by transferring title to some other party. Instead, the Service is empowered to sell the property and to convey to the purchaser "all right, title, and interest of the party delinquent in and to the property sold." 26 U.S.C. 6331(b), 6339(a)(2) and 6339(b)(1).

We do not suggest that the taxpayer has no interest at all with respect to property that has been seized by levy to satisfy his delinquent taxes. A taxpayer is entitled to notice of the seizure and sale. 26 U.S.C. 6335(a) and (b). In addition, he may redeem the property prior to sale by full payment of the delinquent taxes and the expenses of levy, and, in the case of real property, for a period of 120 days [12a] after

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[12] Payment of a debt to the government pursuant to a tax levy is a complete defense against any action the taxpayer might bring. *United States* v. *Bowery Savings Bank*, 297 F.2d 380, 382 (2d Cir. 1961).

[12a] Subsequent to the levy in this case, Section 6337(b) was amended by Section 349A(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 639, to extend the time for redemption to 180 days.

the sale, he may redeem by payment to the purchaser of the amount the purchaser paid at the tax sale, plus interest. 26 U.S.C. 6337(a) and (b). In the event the sale results in surplus proceeds after deduction of the expenses of levy and sale, any specific tax liability on the seized property, and the liability for which the property was seized, the taxpayer is entitled to receive the surplus. 26 U.S.C. 6342(b); see also Treasury Regulations on Procedure and Administration (1954 Code), Section 301.6342-1(b) (26 C.F.R.).[13]

Undoubtedly, the debtor in this case possessed these rights and they passed to the estate when it filed the petition pursuant to the Bankruptcy Code. See generally 4 *Collier on Bankruptcy*, *supra* (15th ed.), ¶ 541.07[3], at 541-29 to 541-30. But these limited rights did not include the right to use and possession of the property absent payment of the taxes. Here, respondent condededly owed $92,000 in withholding and employment taxes. The property seized by the Service would yield at most $35,000 on sale. Hence, respondent's rights to any surplus proceeds on the sale of the property are entirely illusory and no one would expend $92,000 to redeem property worth only $35,000. The critical fact is that once the Internal Revenue Service had seized the property,

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[13] Subsequent to a tax levy, a taxpayer also retains the right to institute a suit for a refund, if there is some basis for challenging the tax liability on the merits. Thus, any right to a refund possessed by the debtor here was property which passed to the estate when the petition for reorganization was filed. See H.R. Rep. No. 95-595, *supra*, at 367; *Segal* v. *Rochelle*, 382 U.S. 375 (1966). Under the provisions of the new Bankruptcy Code, the Bankruptcy Court may hear a suit for refund after the prerequisites of suit are met. See 11 U.S.C. (Supp. IV) 505(a)(2)(B). Respondent, however, does not claim that it is entitled to a refund.

the debtor no longer had any right to its use or possession at the time the petition was filed. In these circumstances, the seized property was not Section 541(a) "property of the estate" that the debtor in possession could "use, sell, or lease" under Section 363 and was therefore not subject to turnover under Section 542(a) of the Bankruptcy Code.

2. Given the extensive effect of a federal tax levy in terminating the delinquent taxpayer's right to use and possession, it is hardly surprising that a unanimous Court in *Phelps* v. *United States*, 421 U.S. 330, 337 (1975), characterized the effect of a tax levy as giving "the United States full legal right to the [property] levied upon as against the claim of the petitioner receiver." [14] As the Court there noted, "His-

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[14] *Bennett* v. *Hunter*, 76 U.S. (9 Wall.) 326 (1870), upon which the court of appeals relied (Pet. App. 27a), is not at variance with the Court's more recent statement in *Phelps*. Contrary to the court of appeals' view (Pet. App. 27a), the forfeiture statute at issue in *Bennett* was not "essentially the same" as the levy provision at issue in this case. The statute involved in *Bennett* provided for the forfeiture of land upon the failure of citizens in the insurgent states to pay taxes that had been imposed upon the land. 76 U.S. (9 Wall.) at 333-335. Section 4 of the Act of June 7, 1862, ch. 98, 12 Stat. 423, provided in relevant part "that the title of, in and to each and every piece and parcel of land upon which said tax has not been paid * * * shall thereupon become forfeited to the United States and upon the sale hereinafter provided for shall vest in the United States or in the purchasers at such sale * * *." The Court strictly construed the forfeiture provision, holding that the first clause did not "direct the appropriation and possession of the land," but rather stated the ground upon which forfeiture of title was based, i.e., nonpayment of taxes. Accordingly, the Court observed that by virtue of the first clause, "What preceded the sale was merely preliminary, and, independently of the sale, worked no divestiture of title" (76 U.S. (9 Wall.) at 336). It was the second clause that "was intended to work the actual investment of the title through public act of

torically, service of notice has been sufficient to seize a debt, *Miller* v. *United States*, 78 U.S. (11 Wall.) 268, 297 (1871), and notice of levy and demand are equivalent to seizure" (*ibid.*). The court of appeals sought to distinguish *Phelps* on the ground that it held only that an assignee for the benefit of creditors, holding cash levied upon by the United States prior to the delinquent taxpayer's adjudication as a bankrupt, was not subject to the summary jurisdiction of the bankruptcy court (see Pet. App. 24a-25a). But the fact that the distinction between summary and plenary jurisdiction has been abolished by the Bankruptcy Code does not undermine the force of the Court's recognition in *Phelps* that a tax levy on property substantially cuts off the delinquent taxpayer's interest in the seized property. That conclusion was a critical step in the Court's conclusion that the assignee was holding the cash on behalf of the United States and not for the bankrupt.[15]

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the government," investing title in the United States or in the purchaser (*ibid.*).

Here, on the other hand, the levy provision set forth in Section 6331(a) of the Internal Revenue Code affirmatively authorizes the Secretary of the Treasury to seize possession of property in which the taxpayer has an interest in order to satisfy his delinquent taxes. See 26 U.S.C. 6331(b); *United States* v. *Sullivan*, 333 F.2d 100, 116 (3d Cir. 1964). Hence, the forfeiture statute at issue in *Bennett* has no bearing upon the effect of the tax levy involved in this case.

[15] Contrary to the court of appeals' apparent belief (Pet. App. 26a), its conclusion that "at the commencement of the Chapter 11 proceeding Whiting had title to the goods the IRS had seized" has no bearing on the question whether the government can be compelled to turn over the seized property under Section 542(a). Under Section 541(a)(1) of the Bankruptcy Code, title is not the relevant consideration. See H.R. Rep. No. 95-595, *supra*, at 367-368; S. Rep. No. 95-989, *supra*,

Thus, a levy virtually transfers ownership of seized property to the government. *United States* v. *Eiland*, 223 F.2d 118, 121-122 (4th Cir. 1955). In a very real sense, property seized by a levy belongs to the government. *American Acceptance Corp.* v. *Glendora Better Builders, Inc.*, 550 F.2d 1220, 1222-1223 (9th Cir. 1977); *United States* v. *Sullivan*, 333 F.2d 100, 116 (3d Cir. 1964) (en banc) (the seizure of a delinquent taxpayer's property by levy is "tantamount

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at 82-83. That provision specifies that "all legal or equitable interest of the debtor in property * * * as of the commencement of the case" are the "property of the estate." As we have explained (pages 16-19, *supra*), that section is not intended to expand the debtor's rights existing as of the commencement of the case. Accordingly, only such interests as the debtor had when the petition was filed pass to the estate by virtue of Section 541(a)(1). Here, when the petition was filed, the debtor had no right to use or possession of the seized property absent full payment of the taxes due. Hence, Section 541(a)(1) did not confer such rights upon the estate.

At all events, to the extent that title is relevant, the Court in *Phelps* pointed out that "the pre-bankruptcy levy displaced any title of Chicago land and [the taxpayer]" (421 U.S. at 337 n.8). Although the court of appeals considered the foregoing statement by the Court in *Phelps*, it concluded that "The remark just quoted must be read as addressed to the particular circumstances of the *Phelps* case, where the tax claim vastly exceeded the amount of the levy and the seizure was of cash which did not need to be sold" (Pet. App. 28a). But this Court's observation in *Phelps* as to the effect of a levy cannot be so easily confined to the facts of that case. Here, too, the tax claim of $92,000 far exceeds the $35,000 value of the property seized. See also *United States* v. *Eiland*, 223 F.2d 118, 121 (4th Cir. 1955), cited with approval in *Phelps* (421 U.S. at 336). Moreover, the fact that cash was the item seized in *Phelps* is a distinction without a difference. Under the pertinent provisions of the Internal Revenue Code, it is not the sale that cuts off the debtor's right to use and possession, but the levy itself.

to a transferal of ownership"). Whether the seized property is tangible or intangible, the government has full legal right to it. *In re Pittsburgh Penguins Partners*, 598 F.2d 1299, 1302 (3d Cir. 1979); see also *Division of Labor Law Enforcement* v. *United States*, 301 F.2d 82, 84-85 (9th Cir. 1962); *In re Chantler Baking Co.*, 436 F. Supp. 169, 174 (W.D. Pa. 1977).[16]

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[16] The court of appeals was unpersuaded by various appellate precedents upon which the government relied that are in accord with this Court's recognition in *Phelps* that a tax levy gives "the United States full legal right to the [property] levied upon as against the claim of the petitioner receiver" (421 U.S. at 337). In the court of appeals' view, "The general thrust of the decisions, as distinguished from some of the language, is to the contrary" (Pet. App. 28a n.18).

But the court overlooked the fact that in upholding the government's position in *Phelps*, this Court rejected the position of the Ninth Circuit in *In re United General Wood Products Corp.*, 483 F.2d 975 (1973), that serving a notice of levy was insufficient to transfer the debtor's interest in property to the government, where the property had not actually been turned over to the government before bankruptcy. In *Wood Products*, the Ninth Circuit had held that accounts receivable, which had been seized by a federal tax levy prior to bankruptcy but had remained in the hands of a third party, were in the constructive possession of the bankrupt and, thus, were subject to the bankruptcy court's summary jurisdiction. The court therefore concluded that the seized property was an asset of the bankruptcy estate, rejecting the government's argument that the levy reduced the property to the government's possession. Hence, *In re Brewster-Raymond Co.*, 344 F.2d 903, 909-910 (6th Cir. 1965), cited with approval by the court below (Pet. App. 28a n.18) and by the now discredited decision in *Wood Products*, is no longer valid precedent. It held that a federal tax levy merely perfects the government's tax lien and does not transfer title. In *Phelps*, however, the Court rejected such an analysis, ruling that a federal tax levy gave the government "full legal right to the property" and

Accordingly, pursuant to Section 541(a)(1) of the Bankruptcy Code, the debtor's rights to receive notice of sale, to redeem, and to receive any surplus proceeds passed to the estate upon the filing of the petion. But once the property had been seized by levy, it could not become property of the estate unless the debtor paid its delinquent tax liability.[17] As the

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pointing out that the levy displaced any title of the bankrupt. 421 U.S. at 337 & n.8.

Nor can the "thrust" of the decisions be so easily dismissed by confining them to their particular facts, as the court of appeals erroneously believed (Pet. App. 28a-29a n.18). Whether or not the amount of the tax debt exceeds the value of the property (as here), or whether the property is intangible or corporeal, these cases all recognized, as this Court subsequently confirmed in *Phelps*, that a levy "effects a seizure of the [debtor's] property tantamount to a transferal of ownership." *United States* v. *Sullivan*, *supra*, 333 F.2d at 116.

[17] See, e.g., *In re Avery Health Center, Inc.*, 7 Bankr. Ct. Dec. (CRR) 210, 212 (W.D.N.Y. 1981); *Parker GMC Truck Sales, Inc.* v. *United States*, 6 Bankr. Ct. Dec. (CRR) 899, 900 (Bankr. S.D. Ind. 1980); *In re Winfrey Structural Concrete Co.*, 6 Bankr. Ct. Dec. (CRR) 695 (Bankr. D. Colo. 1980); *In re Bush Gardens, Inc.* v. *United States*, 5 Bankr. Ct. Dec. (CRR) 1023 (D. N.J. 1979); *In re Paukner*, 10 Bankr. 29 (Bankr. N.D. Ohio 1981); *Douglas* v. *United States*, 7 Bankr. Ct. Dec. (CRR) 690 (Bankr. D. Neb. 1981), *In re Bishop & Son, Inc.* v. *IRS*, 19 Bankr. 633 (W.D. Mo. 1982); *In re Birco Mining Co.*, 8 Bankr. Ct. Dec. (CRR) 795 (N.D. Ala. 1981); *In re Cyber Electric Co.*, 18 Bankr. 921 (Bankr. E.D. Mich. 1982). Contra: *In re Aurora Cord & Cable Co.*, 2 Bankr. 342 (Bankr. N.D. Ill. 1980), aff'd, No. 80-C-396 (N.D. Ill. Dec. 1, 1981) (unpublished opinion); *Alpa Corp.* v. *IRS*, 7 Bankr. Ct. Dec. (CRR) 791 (Bankr. D. Utah 1981), appeal pending, No. C81-0490J (D. Utah); *In re Health America*, 22 Bankr. 268 (Bankr. M.D. Fla. 1982) *Bristol Convalescent Home, Inc.* v. *IRS*, 7 Bankr. Ct. Dec. (CRR) 1151 (Bankr. D. Conn. 1981)

Fourth Circuit put it in *Cross Electric Co.* v. *United States*, 664 F.2d 1218, 1220-1221 (1981), in terms that convincingly refute respondent's claim (footnote omitted):

> It is true, the debtor, even after the levy, retained the right to redeem the property by paying "the amount due, together with the expense of the proceeding, if any, to the Secretary," and, after sale, had a right to receive any surplus remaining after payment of the amount of the levy with the costs. These rights are expressly given by provisions of the Internal Revenue Code of 1954. But that right to redeem requires the debtor, and, after bankruptcy, its trustee, to pay the tax which was the subject of the levy, with costs, and, absent such payment, neither the debtor nor its trustee has any right to the possession of the property, in this case, an account receivable or a right to demand payment to them of such account. The trustee in this case has indicated no intention to redeem; in fact, it would be incredible that he would pay a tax over $40,000 in order to redeem an account of approximately $5,500 (or $10,000, as Cross contends the account actually is). Neither is there any possible likelihood of any surplus arising out of the sale or liquidation of the account levied upon. Since it is thus plain that the trustee is in no position to exercise any of the limited rights it may have to redeem the property levied upon there was no

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(debtor, however, declined to afford adequate protection and thus turnover was never in fact ordered).

Two cases involving state tax levies have required the seized property to be turned over for the debtor's use. *Troy Industrial Catering Service* v. *Michigan*, 2 Bankr. 521 (Bankr. E.D. Mich. 1980); *Barsky* v. *Commonwealth of Pennsylvania*, 6 Bankr. Ct. Dec. (CRR) 1216 (Bankr. E.D. Pa. 1981).

authority in the bankruptcy court to "dissolve" the IRS levy or to order the delivery of the account levied upon by the IRS to the trustee and the Government is entitled to collect the account pursuant to its levy.

C. In enacting the Bankruptcy Code, there is no indication that Congress intended to depart from prior law and require the government to turn over property seized by pre-petition levy to satisfy the debtor's delinquent tax liabilities

1. Although the court of appeals found "some force" (Pet. App. 12a) in the foregoing construction of the statute based upon the plain language and accompanying legislative history, it concluded that "it ultimately must reject it" (*ibid.*). We submit that the decision below is flatly at odds with the plain language of the relevant provisions of the Bankruptcy Code and the explanation of those provisions in the House and Senate reports. The court of appeals simply dismissed the government's reading of the plain terms of the statute as "mechanical" (Pet. App. 12a), and instead supplied the result it believed that Congress must have intended.

The court began its analysis by noting that under Section 257 of Chapter X and Section 507 of Chapter XII of the prior bankruptcy law (Act of June 22, 1938, ch. 575, 52 Stat. 902 and 927, 11 U.S.C. 657 and 907),[18] secured creditors who had repossessed collateral, but had not yet disposed of it, were required to turn over such collateral to the reorganizing debtor. Sections 257 and 507 explicity conferred upon trustees the right to "immediate possession of all prop-

[18] Chapter X provided for corporate reorganizations, and Chapter XII concerned real property arrangements by persons other than corporations.

erty of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage." In addition, a line of decisions including *Reconstruction Finance Corp.* v. *Kaplan*, 185 F.2d 791 (1st Cir. 1950)[19] had appilied this turnover authority in proceedings under Chapters X and XII to property repossessed by secured creditors, on the ground that repossessed collateral was analogous to property held by a trustee or mortgagee. The court of appeals observed that no specific provisions comparable to Sections 257 and 507 of the Act were enacted as part of the new Bankruptcy Code, and reasoned that if the government's interpretation of Sections 363, 541, and 542 of the Code were adopted, the turnover powers available in Chapters X and XII of prior law might not be available under the new Code. The court believed Congress could not have intended such a result (Pet. App. 12a-17a).

In support of its conclusion, the court of appeals cited (Pet. App. 17a-23a) the testimony of certain witnesses at the hearings on revision of the bankruptcy laws, who urged Congress to include in the new Code an explicit provision requiring secured creditors to turn over collateral that they had repossessed prior to bankrupty, and a proposal submitted by the National Bankruptcy Conference, under which "custodians" and "creditors in possession" would have been required to turn over to the trustee "property of the

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[19] See, e.g., *Grand Boulevard Investment Co.* v. *Strauss*, 78 F.2d 180 (8th Cir. 1935); *In re Prudence-Bonds Corp.*, 77 F.2d 328 (2d Cir.), cert. denied, 296 U.S. 584 (1935); *John Hancock Mutual Life Insurance Co.* v. *Casey*, 134 F.2d 162 (1st Cir.), cert. denied, 319 U.S. 757 (1943); *In re Franklin Garden Apartments, Inc.*, 124 F.2d 451 (2d Cir. 1941); *In re Third Avenue Transit Corp.*, 198 F.2d 703, 706 (2d Cir. 1952).

debtor." [20] Noting that Congress had added Section 542(a) to the proposed bill subsequent to this testimony, the court concluded that this sequence of events supported the inference that Congress intended Section 542(a) of the new Bankruptcy Code to codify the rule developed with respect to secured creditors under Sections 257 and 507 of the Bankruptcy Act (Pet. App. 17a-23a).

Having concluded that the prior turnover rule with respect to secured creditors survived the codification of the new bankruptcy statute, the court then reasoned (Pet. App. 23a-32a) that the position of the government following a tax levy is analogous to that of a secured creditor after repossession of collateral. The final step in the court's analysis was that Section 542(a) required the government to surrender to the trustee property it had seized by a levy prior to bankruptcy.

As we shall discuss in point D, pages 39-48, *infra*, we believe that the court's initial premise that Section 542(a) carried forward the prior turnover rule with respect to secured creditors is erroneous. But even if we assume *arguendo* that the court correctly inferred that Congress intended to carry forward in the new Bankruptcy Code a turnover rule with respect to secured creditors, that conclusion furnishes no support

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[20] See *Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong. 1st & 2d Sess., Pt. 1, at 439, 489-493; Pt. 2, at 1023; Pt. 3, at 1756-1757, 1838-1839 (1975-1976). *The Bankruptcy Reform Act: Hearings on S. 235 and S. 236 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess., Pt. 1, at 125; Pt. 2, at 464 (1976).

for its extension of the turnover rule to the government's seizure of property by a pre-petition tax levy. That final step in the court's reasoning is a radical departure from prior law. Without affirmative evidence that Congress intended to impose such a restriction upon the tax collection process, the courts should not thus impede the effectiveness of a levy.

2. The court of appeals concluded that Congress intended to incorporate in Section 542 of the new Bankruptcy Code a "rule" unexpressed by Congress that had developed (the court assumed) under case law interpreting Sections 257 and 507 of the Bankruptcy Act.[21] The essence of the court's theory was that the turnover authority in Chapters X and XII proceedings under the Bankruptcy Act was such a crucial tool of reorganizing debtors that Congress could not be thought to have omitted that authority under the new Code, without some affirmative indication that it was doing so. That reasoning, however, provides no justification for establishing a substantive rule of law requiring the turnover of property seized prior to bankruptcy to satisfy the debtor's delinquent tax liabilities. Under prior law, property seized by a pre-petition tax levy was not subject to turnover authority either in liquidating bankruptcies (*Phelps* v. *United States*, *supra*) or in Chapter XI proceedings (*In re Pittsburgh Penguins Partners*, 598 F.2d 1299 (3d Cir. 1979)). Although *Pittsburgh Penguins* arose under Chapter XI of the Bankruptcy

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[21] The court acknowledged (Pet. App. 15a-16a n.12), however, that the scope of that turnover authority was regarded as unsettled under prior bankruptcy law. See, e.g., Murphy, *Restraint and Reimbursement: The Secured Creditor in Reorganization and Arrangement Proceedings*, 30 Bus. Law. 15, 29, 39 (1974).

Act, we know of no case holding that such turnover authority can be exercised to deprive the government of property seized by a pre-petition levy under either of the two other reorganization chapters, Chapters X and XII. Accordingly, there was no established rule under prior law requiring the government to surrender property seized by a pre-petition tax levy. The court's conclusion that there was such a rule (although no case had so held) and its inference that Congress had codified it (although the legislative history makes no mention of it) are flatly at odds with the legislative process leading to the enactment of the Bankruptcy Code. Indeed, we are advised by the Internal Revenue Service that it is not aware of any instance in a Chapter X or XII proceeding in which a court ordered the turnover of property seized pursuant to a pre-petition levy.

While the court of appeals acknowledged (Pet. App. A 16a) that it should avoid declaring a major change in the law without some unambiguous indication that Congress so intended, that is precisely the course it followed in this case. In holding that the Internal Revenue Service is subject to turnover orders for property seized pursuant to levy prior to bankruptcy, the court has in fact made a drastic change in the law concerning collection of taxes, without any explicit indication in the legislative history that Congress intended so substantially to alter the long-accepted status of government tax levies. Significantly, the Senate Finance Committee Report, which summarized the important tax aspects of the proposed legislation, did not mention any intended change from prior law with respect to turnover authority in the context of a tax levy. S. Rep. No. 95-1106, 95th Cong., 2d Sess (1978). Because Congress evidenced no clear intent to change the law with respect to federal tax levies, the court of appeals' extension of the rule it believed to have

been carried forward to include tax levies was unwarranted. As this Court has often stated, "[i]t will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." *United States* v. *Ryder*, 110 U.S. 729, 740 (1884). Accord: *Aberdeen & R.R.R.* v. *Students Challenging Regulatory Agency Procedures*, 422 U.S. 289, 309 n.12 (1975); *Muniz* v. *Hoffman*, 422 U.S. 454, 467-472 (1975); *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222, 227 (1957).

Although the committee reports are replete with references to case law altered by the statutory provisions Congress enacted, neither the House nor the Senate report accompanying the legislation makes any mention of a change in the law in this regard. While it is true that certain witnesses at the hearings cited by the court of appeals (Pet. App. 19a-21a) urged Congress to grant explicit turnover authority with respect to collateral in the possession of secured creditors, there was no reference to any requirement that the government turn over property it had seized by a tax levy prior to bankruptcy. See, e.g., *Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st & 2d Sess., Pt. 1, at 439, 489-493; Pt. 2, at 1023; Pt. 3, at 1756-1757 (1975-1976); *The Bankruptcy Reform Act: Hearings on S. 235 and S. 236 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess., Pt. 1, at 125; Pt. 2, at 464 (1975). Furthermore, Congress did not enact the proposal of the National Bankruptcy Conference, to which the court of appeals referred (Pet. App. 20a). Instead, it enacted Section 543, which is limited in scope to

"custodians" and does not require secured creditors to surrender collateral in their possession. The comments in the relevant portions of the House and Senate reports in no way suggest that Congress intended to extend turnover authority to property seized by tax levy.[22]

Moreover, extensive consideration was given to the provisions of the Code having tax consequences.[23] Yet neither the Report of the Senate Finance Committee, nor the study prepared for the House Ways and Means Committee, both of which summarized and discussed the significant tax aspects of the proposed legislation, mentioned any change in the law with respect to turnover authority in the tax levy context. S. Rep. No. 95-1106, 95th Cong., 2d Sess. (1978); Staff of the Joint Comm. on Taxation, 95th Cong., 2d Sess., *Tax Aspects of Bankruptcy: Summary of H.R. 9973* (Comm. Print 1978). See also H.R. Rep. No. 95-595, *supra*, at 10, which indicates that "Bankruptcy is mainly a procedural device, prescribing the method of accomplishing rehabilitation or liquidation, but

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[22] Indeed, a general comment in the House report indicates that the divergence in policy with respect to taxes between the bill before the Committee on the Judiciary and the proposals of the Bankruptcy Commission and the National Conference of Bankruptcy Judges was due in part to insensitivity to tax policy and tax issues reflected in the proposals and at the hearings. H.R. Rep. No. 95-595, *supra*, at 274.

[23] In addition to the consideration given the tax consequences of bankruptcy by the respective House and Senate Judiciary Committees in their reports, the Senate Finance Committee reviewed the significant tax aspects of the proposed Bankruptcy Code and submitted a report. In addition, a study of the tax effect of bankruptcy was prepared for the House Ways and Means Committee. See Klee, *Legislative History of the New Bankruptcy Code*, 28 De Paul L. Rev. 941 (1979) (*reprinted in* 54 Am. Bankr. L.J. 275 (1980)).

generally leaving undisturbed * * * relationships that existed before bankruptcy." In these circumstances, a drastic change in the law with respect to the effect of pre-bankruptcy tax levies should not be implied.

3. Finally, in analogizing the government's position as a tax collector to the position of a secured creditor, the court of appeals disregarded the substantial differences between private creditors and the government as tax collector.

There are sharp differences between the consensual relationship of a private creditor and his debtor, and the involuntary relationship of the government and a delinquent taxpayer. See H.R. Rep. No. 95-595, *supra*, at 190. As the court of appeals noted (Pet. App. 31a), the government became a creditor here because the "debtor has simply helped itself to amounts withheld from employees." That the taxes involved included employee withholding taxes that the debtor failed to remit to the government is, as the court of appeals acknowledged, a fact "of peculiar force" (Pet. App. 31a). It also, however, serves to place the error of the decision below in sharper focus. As we have pointed out, the legislative history of the Bankruptcy Code indicates that Congress deleted a provision that would have explicitly provided that "trust fund" taxes are not "property of the estate." Since such taxes are held in trust for the government (26 U.S.C. 7501), Congress determined that a special provision excluding them from "property of the estate" was unnecessary. 124 Cong. Rec. 32417, 34016-34017 (1978). Hence, if withheld taxes are still in the debtor's possession, they are not property available for the debtor's use. Ironically, under the court of appeals' decision, if the government has taken active steps to collect by levy delinquent

amounts due for such withholding taxes, the court would require that the seized property be returned to the debtor for its use. Such a result unjustly rewards the debtor for its misappropriation of the government's funds.

Moreover, the fundamental distinctions between private creditors and the tax collector are reflected in the various collection remedies available to private creditors and the Internal Revenue Service. For example, the government is authorized to levy upon "all property and rights to property" belonging to a delinquent taxpayer, while a private secured creditor is secured only by the property specified in his security agreement or that upon which he perfects a lien by taking the steps required under local law to become a lien creditor. 26 U.S.C. 6331; cf. U.C.C. § 9-204 (1981). While the government is empowered by federal statute summarily to collect delinquent taxes by means of a levy, a private creditor must obtain the assistance of the appropriate legal officer to repossess collateral, unless the debtor peaceably relinquishes it.[24] 26 U.S.C. 6331; cf. U.C.C. §§ 9-501(1), 9-503 (1981). In short, it can not be said that the collection remedies of private creditors are as extensive as those available to the government when it seeks to collect its taxes.

Indeed, the differences between the governent's interest in tax collection and the claims of private creditors have long been reflected in the congressional resolution of the competing interests in bankruptcy proceedings of debtors, creditors, and the government. The new Bankruptcy Code was not intended to be "primarily a debtor's bill." H.R. Rep. No. 95-595,

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[24] Of course, collateral in the possession of a sheriff or other similar officer would be subject to turnover authority contained in Section 543, which applies to "custodians."

supra, at 4. Instead, Congress sought to balance the "goals of rehabilitating debtors and giving equal treatment to private voluntary creditors * * * with the interests of governmental tax authorities who, if unpaid taxes exist, are also creditors in the proceeding." S. Rep. No. 95-989, *supra*, at 13-14; see H.R. Rep. No. 95-595, *supra*, at 274; S. Rep. No. 1106, *supra*, at 2, 5. Because taxes are, as the Court stated in *Bull* v. *United States*, 295 U.S. 247, 259 (1935), the "lifeblood of government," Congress was sensitive to the impact of bankruptcy law with respect to tax matters upon the integrity of the tax system. The Senate Judiciary Committee Report noted that Congress was keenly aware that our voluntary assessment system of taxation can function only "to the extent that the majority of taxpayers think * * * [the system is] fair," and that this "presumption of fairness" must not be "jeopardized by permitting taxpayers to use bankruptcy as a means of improperly avoiding their tax debts." S. Rep. No. 95-989, *supra*, at 14. The committee also observed that "to the extent that debtors in bankruptcy are freed from paying their tax liabilities, the burden of making up the lost revenues * * * must be shifted to other taxpayers." *Ibid.* Thus, even if the collection of taxes by means of a federal tax levy is to some extent analogous to the collection of a debt by a secured creditor, as the court of appeals believed, it should not have assumed that Congress intended to treat both in the same manner. The considerations underlying the treatment of private claims and those underlying the treatment of governmental claims based on unpaid taxes are discrete.

Accordingly, the government is afforded priority with respect to specific tax claims and favorable treatment with respect to discharge. 11 U.S.C. (Supp. IV) 507 and 523. In addition, as we have indicated in

detail (page 36, *supra*), Congress has made it clear that withheld taxes are not part of the bankruptcy estate, even when the tax funds are in the possession of the debtor at the time the petition is filed and have been commingled with other assets. Compare 11 U.S.C. (Supp. IV) 363(c)(2)(B), which authorizes a trustee to use "cash collateral" in which a private creditor has an interest. Furthermore, a plan of reorganization is not to be confirmed if its "principal purpose * * * is the avoidance of taxes." 11 U.S.C. (Supp. V) 1129(d).

In sum, in extending turnover authority to include property seized by a pre-bankruptcy tax levy, the court of appeals disregarded the principle that significant substantive changes in the law are not to be declared without an unambiguous indication that Congress intended to alter the effect of pre-bankruptcy levies, and that change in the law is not required, or even suggested, by the explicit terms of the relevant statutes.

D. At all events, Section 542(a) of the Bankruptcy Code does not require secured creditors to turn over repossessed collateral

1. At all events, there is no basis for the court of appeals' initial premise that Congress intended Section 542(a) to require secured creditors to turn over repossessed collateral. A court's first duty in interpreting a statute is to give effect to the terms employed in the statutory provision, where the terms are plain and that method produces a reasonable result. See, e.g., *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965); *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 US. 102, 108 (1980); *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 453 U.S. 1, 13 (1981); *Rubin* v. *United States*, 449 U.S. 424, 430 (1981); *Howe* v. *Smith*, 452 U.S. 473, 480, 483 (1981); *United States*

v. *Turkette*, 452 U.S 576, 580 (1981). But here, the court of appeals simply dismissed reference to the statutory terms as "mechanical" (Pet. App. 12a), and adopted an interpretation of the relevant statutes that is inconsistent with their terms. Furthermore, the court's interpretation of the statutory scheme is inconsistent with the explanations of the relevant provisions in the House and Senate reports. Finally, contrary to the conclusion of the court below, giving effect to the plain meaning of the relevant provisions does not unduly limit the substantial arsenal of tools available to the trustee to gather the debtor's assets for administration in bankruptcy proceedings.

2. The court of appeals did not explain how its statutory interpretation derives from the terms of the relevant provisions. It apparently found that turnover of repossessed collateral was authorized by Section 542(a) standing alone (see, e.g., Pet. App. 22a-23a). But that interpretation cannot be reconciled with the plain terms of that provision. Section 542(a) contains no requirement that repossessed collateral must be surrendered. Rather, by its terms, the section points to Section 363 and, through the operation of Section 363, to Section 541(a) for identification of the "property of the estate" subject to turnover.

Furthermore, the plain meaning of the relevant statutes, when interpreted together, is in conflict with the court's view. Section 542(a) directs an entity to turn over property that the trustee may use, sell or lease under Section 363. As we have explained (pages 13-16, *supra*), Section 363 specifies that under certain circumstances the trustee may use, sell or lease "property of the estate." Section 363 contains no terms indicating that the trustee may use, sell or lease repossessed collateral. Instead, it directs reference to Section 541(a), in which the term "property

of the estate" is defined. Section 541(a)(1) in turn indicates that the estate includes "all legal and equitable interests of the debtor in property as of the commencement of the case." The court of appeals' interpretation that the estate includes property in which the debtor has an interest can not be reconciled with the terms of Section 541(a)(1), limiting that which is to be included in the estate to the debtor's *interests* in property. Surely, the statutory terminology—"the interests of the debtor in property" —is a good deal narrower than the court of appeals' expansive textual revision—property in which the debtor has an interest. Simply put, the terms of Sections 363, 541(a) and 542(a) will not support the court's variant reading of the statute.

3. Even if the relevant statutory terms were ambiguous in defining the extent of property subject to a turnover order, the legislative history demonstrates that the court of appeals erred in defining the scope of property subject to turnover. In considering legislative history, it is well established that the text of the final House and Senate committee reports explaining the measure, as well as the explanatory remarks concerning the legislation made by the chief sponsors immediatley prior to final passage, are of primary value. *United States* v. *International Union United Automobile Workers*, 352 U.S. 567, 585 (1957); *NLRB* v. *Fruit & Vegetable Packers & Warehousemen*, 377 U.S. 58, 66 (1964).

Here, as we have pointed out (pages 15-19, *infra*), the Congressional reports and explanatory remarks concerning the relevant sections of the Code indicate that the substantive rule governing what property must be turned over is found in Section 541(a), not Section 542(a). The explanation concerning Section 541(a)(1) emphasizes that the general rule is that (except for rights provided the estate by other spe-

cific provisions, which are contained in Sections 541 (a)(2) through (7)) "property of the estate" consists only of the debtor's *interests in property* as of the time the petition was filed, even if the debtor held something less than full ownership or possessory right.[25]

The court of appeals gave no weight to the explanation in the foregoing primary legislative sources. Rather, the court rested its conclusion largely upon its belief that Congress intended to retain prior law regarding turnover, despite Congress' failure to employ terms accomplishing that end or make its desire

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[25] The court of appeals stated (Pet. App. 12a-13a, 29a) that its interpretation of the statute was consistent with the explanations in the House and Senate reports, citing the statement that (H.R. Rep. 95-595, *supra*, at 367; S. Rep. No. 95-989, *supra*, at 82)—

> It [Section 541(a)(1)] includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act, § 70a, as well as property recovered by the trustee under section 542 of proposed title 11, *if the property recovered was merely out of the possession of the debtor*, yet remained "property of the debtor." [Emphasis supplied.]

On its face, the statement indicates that the trustee may recover property for inclusion in the estate if it is "*merely* out of the debtor's possession" (emphasis supplied). Read in context, the statement does not mean that upon filing a petition in bankruptcy the debtor's rights are expanded to include a right to possession. As we have noted (pages 16-18, *supra*), the reports explain that the section is not intended to expand the debtor's rights against others more than they existed at the commencement of the case (*ibid.*). Indeed, Congress believed that under Section 541(a)(1) only the debtor's interests in property passed to the estate. It therefore deleted two provisions that would have illustrated the application of that principle. See pages 18-19, 36, *supra*.

to do so explicit in the House and Senate Committee reports. Thus, while the court stated (Pet. App. 29a) that its result is "entirely consistent" with Congress' intent that Section 541(a)(1) not serve to expand the trustee's rights beyond those of the debtor at the commencement of the case, that is simply not the case. At the time respondent filed its petition, it did not have any right to obtain the seized property absent full payment of its tax liability. The court of appeals, however, granted respondent just such an expanded right.

Furthermore, the court relied upon the statements and proposals of witnesses in hearings before congressional committees, even though the proposals and suggested terms were not employed in the statute that Congress ultimately enacted. These witnesses urged Congress to require secured creditors to turn over repossessed collateral in their possession. Moreover, the National Bankruptcy Conference proposed an explicit statutory requirement that "custodians" and "creditors in possession" turn over property in their possession. See Pet. App. 21a n.16. But there is no mention in the House and Senate reports that Congress intended to require secured creditors to turn over repossessed collateral, nor did Congress incorporate in the Code without significant amendment the proposal of the National Bankruptcy Conference. Instead, Congress enacted Section 543, which requires only "custodians" to turn over property in their possession.[26] Insofar as creditors were concerned, Congress enacted Section 542(a) and that provision contains no explicit terms requiring secured creditors to

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[26] The court of appeals agreed with our submission that the Internal Revenue Service is not a "custodian" of property seized in a levy within the meaning of Section 543(a) (Pet. App. 10a).

surrender repossessed collateral. In sum, the legislative history of the relevant provisions falls far short of even suggesting, much less demonstrating, that Congress agreed with the testimony of the witnesses.

4. a. The court of appeals further indicated that it believed that a literal interpretation of the words actually enacted in Section 542(a) would unduly restrict the function of the statute. In its view (Pet. App. 23a), if the government's interpretation of Section 542(a) were adopted, "apparently its only use would be to authorize obtaining property from persons in wrongful possession following theft or conversion."

By virtue of its terms, however, Section 542(a) is a general enforcement provision, providing the bankruptcy courts with explicit authority to order turnover of any property to which the estate is entitled under Section 541, but which remains in the possession, control or custody of another entity. For example, Section 542(a) has been invoked to enforce the right of a business involved in bankruptcy proceedings to obtain delivery or return of goods under contractual or lease arrangements.[27]

The use of Section 542(a) as a general enforcement provision is also consistent with prior law. As the Court recognized in *Maggio* v. *Zeitz*, 333 U.S. 56, 61-63 (1948), the bankruptcy courts had developed a "summary" turnover procedure under prior law that was applicable in liquidation as well as reorganization proceedings, in order to compel the sur-

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[27] See, e.g., *Fairway Records, Inc.* v. *Direct Response Productions, Inc.*, 2 Collier Bankr. Cas. 2d 1015 (Bankr. E.D.N.Y. 1980); *In re Brendern Enterprises, Inc.*, 7 Bankr. Ct. Dec. (CRR) 1137 (Bankr. E.D. Pa. 1981); *In re Janmar, Inc.*, 1 Collier Bankr. Cas. 2d (MB) 1051 (Bankr. N.D. Ga. 1980); see also *Resendez* v. *Lindquist*, 691 F.2d 397 (Bankr. 8th Cir. 1982).

render to the trustee of all property interests to which the trustee was entitled. The Court ruled that the turnover procedure was a "judicial innovation by which the [bankruptcy] court seeks efficiently and expeditiously to accomplish ends prescribed by the statute" (*id.* at 61).

A common use of the summary turnover procedure was against a bankrupt party himself who had retained assets which rightfully belonged to the estate. See *Maggio* v. *Zeitz*, *supra*, 333 U.S. at 59; *Oriel* v. *Russell*, 278 U.S. 358 (1929); *Cooper* v. *Dasher*, 290 U.S. 106 (1933). But the turnover procedure was also used in cases where entities other than the bankrupt were involved. See, e.g., *Farmers' & Mechanics' National Bank* v. *Wilkinson*, 295 F. 120, 122 (5th Cir. 1923), cert. denied, 264 U.S. 588 (1924) (bank was ordered to turn over sums it received from the bankrupt after the petition was filed); see also *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U.S. 426, 433 (1924); *Harris* v. *Brundage Co.*, 305 U.S. 160, 164 (1938).

b. The court of appeals further believed that giving effect to the plain meaning of the statutes would narrow the definition of "property of the estate," in derogation of the legislative history that Section 541 (a)(1) was intended to include all interests in property formerly available to the trustee under Section 70a of the Bankruptcy Act (see Pet. App. 12a-13a, n.10). But our position with respect to the general rule of Section 541(a)(1) preserves the general rule stated in Section 70a of the Bankruptcy Act, as Congress intended.

Section 70a (see Act of July 1, 1898, ch. 541, 30 Stat. 565, 11 U.S.C. 110(a)) generally included within the bankruptcy estate a broad range of the debtor's interests in property as of the date of the

filing of the bankruptcy petition.[28] See, e.g., 4A *Collier on Bankruptcy*, ¶ 70.04, at 49-62 (14th ed. 1978). It was clear, however, that Section 70a, as a general rule, vested the estate with no *greater* property rights than had been available to the debtor prior to the filing of the petition. See, e.g., *Hewitt* v. *Berlin Machine Works*, 194 U.S. 296, 302 (1904); *Security Warehousing Co.* v. *Hand*, 206 U.S. 415, 423 (1907); *Hyman* v. *McLendon*, 140 F.2d 76, 80 (4th Cir. 1944), cert. denied, 322 U.S. 739 (1944); *Schultz* v. *England*, 106 F.2d 764, 768 (9th Cir. 1939); 4A *Collier on Bankruptcy, supra* (14th ed.), ¶ 70.04, at 55-57. Section 541(a)(1) preserves these former rules.

c. Contrary to the inference drawn by the court of appeals (Pet. App. 12a-13a), it does not follow from the foregoing interpretation of Section 541(a)(1) that the trustee never has greater rights to property than the debtor had when the petition was filed. The Bankruptcy Code contains numerous provisions which expand the rights of the

[28] Section 70a consisted in large part of a detailed enumeration of specific property interests which passed from the debtor to the estate at filing. See Sections 70a(1) through (8), and the three additional (unnumbered) paragraphs of Section 70a. Section 70a(5), however, provided a broad general description of property interests passing to the estate, i.e., all "property * * * which prior to the filing of the petition [debtor] could by any means have transferred or which might have been levied upon and sold under judicial process against him." See, e.g., 4A *Collier on Bankruptcy* (14th ed. 1978), ¶¶ 70.04, 70.15, at 49-62, 135-137.

Other provisions of the Bankruptcy Act conferred avoiding powers and other rights upon the trustee that were not held by the debtor. See, e.g., Section 60 of the Bankruptcy Act (11 U.S.C. 96), which allowed the trustee to avoid "preferential" transfers of property that were made prior to bankruptcy.

trustee with respect to property beyond the scope of the predecessor Section 70a. As we have pointed out, Sections 541(a)(2) through (7) include within the definition of "property of the estate" various interests which would not otherwise be included as part of the bankruptcy estate. For example, Section 541(a)(3) makes it clear that "property of the estate" includes "[a]ny interest in property that the trustee recovers under section[s] 543 [property held by a custodian], 550 [property obtained through the use of the trustee's avoiding powers], 553 [certain property concerning which a creditor has exercised a right of set-off], or 723 [certain partnership property]."[29] Section 541(a)(2) also brings within the estate certain community property "of the debtor and the debtor's spouse." Thus, contrary to the apprehension expressed by the court below, adhering to the plain terms of Section 541(a)(1) so as to conclude that the estate has only such interests in property as the debtor had when the petition was filed does not detract from the substantial array of specific powers that the new Code gives to the representative of a debtor to assist in the debtor's reorganization.

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[29] The trustee is granted substantial avoiding powers by Sections 544 (rights as a lien creditor), 545 (power to avoid statutory liens), 547 (right to avoid preferences), 548 (right to avoid fraudulent transfers), 549 (right to avoid certain post-petition transactions), and 724(a) (power to avoid liens that secure the payment of a fine or penalty). Section 550 provides in relevant part that "to the extent that a transfer is avoided under section[s] 544, 545, 547, 548, 549 or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or * * * the value of such property." In turn, Section 541(a)(3) makes it clear that property recovered under Section 550 is "property of the estate."

d. Finally, the court of appeals concluded that "the Government's reading of the Bankruptcy Code would seriously affect the chances of success in many reorganizations" (Pet. App. 16a). Absent compelled turnover, the court apparently believed that respondent would not be able to continue in business. That may well be the case. Respondent, however, is hardly an appropriate candidate for such solicitude. As the court of appeals acknowledged, it "simply helped itself to amounts withheld from employees" (Pet. App. 31a). And only after the government exercised its right to levy, did respondent seek the protection of bankruptcy. Thus, respondent's actions come too late to compel the return of its property. Whatever protection the bankruptcy laws may provide respondent, they cannot undo the effect of a pre-petition tax levy which "gave the United States full legal right to the [property] levied upon as against the claim of the * * * [debtor-in-possession]." *Phelps* v. *United States, supra*, 421 U.S. at 337.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted.

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